United Nations HRI/CORE/NAM/2014

International Human Rights Instruments

Distr.: General
9 March 2015

Original: English

Common core document forming part of the reports of States parties

Namibia*

[Date received: 14 November 2014]

* The present document is being issued without formal editing.

GE.15-04552 (E)

1504552

Please recycle

Contents

		Paragraphs	*Page*
	Introduction	1	3
I.	General information about Namibia	2–47	3
	A. The land and the people	2–14	3
	B. Brief political background of Namibia	15–29	5
	C. The economic, social and cultural characteristics of Namibia	30–47	7
II.	Legal and institutional framework for the protection of human rights	48–61	10
	A. The Constitution	48	10
	B. The judiciary	49–53	10
	C. Judicial precedents of human rights cases	54–56	11
	D. The Ombudsman	57–58	12
	E. Ministry of Justice	59	12
	F. The Police Force	60	12
III.	Legislation supporting human rights	61	12
	Annex*		

* The Annex may be consulted in the files of the secretariat

Introduction

1. Namibia is proud to present this document to the Treaty Division of the Office of the High Commissioner for Human Rights. Namibia is a party to most of the major international human rights instruments. The list of the instruments, which Namibia is State party to, together with the dates of signature/accession/succession, is listed in the Annex. In order for Namibia to meet and respect its international obligations, the Government established an Inter-Ministerial Committee on Human Rights and International Humanitarian Law, which is coordinated by the Ministry of Justice and is represented by the Offices/Agencies and Ministries that have the promotion and protection of human rights at the core of their functions and mandates. Namibia was elected as a member of the Human Rights Council in 2013 and will serve as such until December 2016.

I. General information about Namibia

A. The land and people

1. The land

2. Namibia's name is derived from the Namib Desert, a unique geological feature renowned for the pristine and haunting quality of its landscape. Geographically, Namibia is located in southern Africa, bordering the (South) Atlantic Ocean, Angola, Botswana, South Africa, and Zambia. The total area of the country is 825,418 square kilometres or 317,827 square miles, and is the thirty-fourth biggest country in the world.

3. Topographically, the country is divided into three regions: the Namib desert, the oldest desert in the world which stretches along the South Atlantic coast, along the entire length of the country from the Angolan border to the South African border in the south with dune belts, dry riverbeds and deeply eroded canyons (second biggest canyon after the Grand Canyon); the Central Plateau which runs from north to south, has an average altitude of between 1,000 to 2,000 metres above sea level; and the Kalahari Desert, a relatively level expanse of land characterized by long vegetated dunes of ancient red sand, thick layers of the terrestrial land and limestone.

4. Namibia has a dry climate typical of a semi-desert country where droughts are a regular occurrence. It is one of the most arid countries in the world. Rainfall figures are low and variable. Namibia has five perennial rivers, all of which lie on its borders. These are the Orange River in the south, and the Kunene, Okavango, Zambezi and Kwando/Linyanti/Chobe rivers in the northeastern regions.

5. Because Namibia is an arid country, it is one of the least densely populated countries in the world, with an average population density of 2.1 people per square kilometre. The implications of such aridity are that water is scarce, difficult and expensive to locate and to extract and there is a high risk of irreversible degradation.

2. Population

6. The 2011 Population and Housing Census estimated the total population to be 2,113,077 million inhabitants. The 2011 Census results reveal that 1,091,165 are females and 1,021,912 are males. According to these census results, 94% of the residents are Namibian and only 3% are non-Namibian.

7. Namibia is still mainly a rural society. In 2011, it was estimated that 57% of the population live in rural areas and only 43% live in the urban areas. 23% of the total population is under 14 years and 57% is between 15 and 59 years of age, with 7% 60 years

of age or older. About 89% of the population between 15 and 60 years old is classified as literate because they can read and write with understanding in any of the Namibian languages.

8. English is the official language but Afrikaans is a common language in most cities and towns. Indigenous languages such as Ju/hoasi, a San language, are also spoken and taught at lower primary school level. Ju/hoasi, among other mother-tongue indigenous languages is a medium of instruction for the first three years of education in some schools. After grade 3, English becomes the medium of instruction with the mother tongue as a subject throughout their schooling period. Other languages include the Bantu languages, spoken by Oawambos (51.9%), Kavangos (11.8%), Hereros (8.1%), Caprivians (4.9%) and Tswanas (0.3%); and the Khoi-San languages spoken by Nama/Damara (10.5%), and Bushmen (San) (1.5%). With its cosmopolitan society, other languages from around the world are also spoken in Namibia. Among the European languages spoken in Namibia are German, Portuguese, Spanish and French.

9. Namibia is a secular state in terms of the Constitution, and freedom of religion is one of the fundamental freedoms recognized in Chapter 3 of the Constitution. It is estimated that about 90% of the population is Christian while 10% practise other religions.

10. Despite its small population, Namibia is a country with rich culture and traditions. Like many African countries, it has diverse ethnic groups such as Aawambos, Kavangos, Ovahereros, Caprivians, Damaras, Namas, Tswanas, Germans, San, Afrikaners, Basters and Coloureds.

11. The capital city, Windhoek, being a centre of commerce, attracts more and more young people looking for work, as do the coastal towns. The Khomas region is the most populated region apart from the north of the country.

12. Like many countries in Africa, Namibia faces threats to its social welfare and the economy. HIV/AIDS is a major threat and remains one of the leading causes of death in the country. Alcohol and other substance abuse is increasingly becoming a social challenge and the effects thereof are spilling over onto and worsening the existence of other social evils, which Namibia is struggling to eradicate.

13. The first case of HIV/AIDS in Namibia was diagnosed in 1986. During the past decades, HIV/AIDS increased and spread to all areas of the country. The Ministry developed various guidelines and procedure manuals such as the Namibian HIV/AIDS Charter of Rights. A Code on HIV/AIDS in the workplace was compiled and was passed by the National Assembly in 1998. The Code defines the legal and human rights of people living with HIV/AIDS and makes provision for education on HIV/AIDS awareness and prevention at all workplaces. The public sector, private sector, civil society organizations and other initiatives have developed programmes to expand the response to the national HIV/AIDS pandemic.

14. Economic factors such as poverty, disparity in income distribution and migration play a significant role in furthering the pandemic. Other contributing factors that are generally accepted as linked to the spread of the epidemic, although not substantiated by research, include certain cultural practices, cross-border movements, gender inequalities, stigma, discrimination, denial, and violence against women and children. The infant mortality rate is 42 deaths per 1,000 live births, and life expectancy at birth is 66 years for females and 64 years for males (*source: WHO Global Health Observatory 2009*).

B. Brief political background of Namibia

1. Pre-independence Namibia

15. During pre-colonial times, Namibia was inhabited by the San, the Damara, and the Nama and later by immigrating Bantu who came from the central part of Africa. These Bantu groups now make up the Caprivians, the Ovaherero, the Kavango, and the Aavambo.

16. From the thirteenth century, the Germans and British missionaries and foreign traders began penetrating the interior of Namibia. The traders soon brought into the country goods including arms, which they bartered for local Namibian commodities. Eventually, European traders increased in number and started to acquire land through unequal trade agreements and other questionable means. In the meantime, the missionaries began interfering in local politics as mission stations and churches were planned as military centres.

17. Finally in 1890, the country was brought under German colonial rule until the end of World War I. During this period of colonization, the Namibian people were denied their rights and their traditional way of life was disrupted. In 1915, South African troops occupied Namibia and established a military administration in the territory. After the First World War, the Allied Powers decided that Germany should be divested of all its colonies including Namibia.

18. The Covenant of the League of Nations placed Namibia under the administration of the League of Nations mandate system, and the people were therefore not permitted to exercise their right to self-determination. Britain had been designated as the mandatory power for Namibia, but in 1920, by a specific agreement, South Africa was appointed to administer Namibia on behalf of the British Crown.

19. On assuming its obligations under the League of Nations mandate, South Africa attempted to annex Namibia as one of its provinces. It entrenched political, social and economic discrimination through institutionalization, accompanied by massive human rights violations. In violation of its mandate under the Covenant of the League of Nations, South Africa encouraged the immigration of more whites from its territory to Namibia and promoted racial segregation.

20. The demise of the League of Nations and the mandate system saw the establishment of the United Nations trusteeship system under the Charter of the United Nations. Countries with mandatory powers entered into trusteeship agreements with the United Nations and by so doing placed their mandate under the new system. However, South Africa rejected the idea that the mandate system had been superseded by the United Nations trusteeship system and challenged the authority of the United Nations to interfere in the affairs of Namibia. Recommendations and appeals were made to South Africa, asking it to relinquish its mandate over Namibia and to conclude a trusteeship agreement with the United Nations, but South Africa refused to do so. The matter was brought before the International Court of Justice (ICJ) for an advisory opinion in 1971 and the ICJ reaffirmed that the provisions of the Charter were applicable to South Africa and that previously mandated territories should be brought under the United Nations trusteeship system. However, South Africa continued to reject the authority of the United Nations over Namibia.

21. In 1960, the South West Africa People's Organization (SWAPO) was formed within Namibia as an opposition to the South African apartheid regime. During this period, there were mass campaigns against the illegal occupation of Namibia and the ongoing human rights violations. The SWAPO leadership faced violent persecution and was eventually forced to leave the country and go into exile to pursue alternative methods to dislodge the South African stranglehold over Namibia. In October 1966, the United Nations General Assembly by resolution decided to terminate South Africa's mandate over Namibia. This

was later followed in 1971 by ICJ decision to the same effect but South Africa remained obstinate.

22. The continued refusal of South Africa to comply with the resolutions of the United Nations General Assembly and the opinion of the ICJ forced SWAPO and the Namibian people to wage an armed struggle in order to liberate the country. SWAPO launched an armed struggle for freedom in 1966 and continued to pursue the fight when a ceasefire was concluded with the South African government as part of the process which led to the holding of United Nations-supervised elections in November 1989. Throughout the struggle, Namibians continued to suffer under the South African apartheid system and the exploitation of human and natural resources of the country also continued.

23. On the international scene, negotiations continued and finally an agreement was reached, calling for the holding of free and fair elections in the country. In 1989, SWAPO and South Africa signed a ceasefire agreement mediated by the United Nations. Elections were held under the auspices of the United Nations and SWAPO won the elections. The 1989 elections were to establish a Constituent Assembly of elected officials who drafted a new Constitution for an independent Namibia. Namibia became independent on 21 March 1990 and the Constitution was adopted on 9 February 1990 as the supreme law of the country.

2. Post-independence Namibia

24. The main features and emphasis of the preamble of the Namibian Constitution are the principles of equality and the inherent dignity of all members of the human race and the total rejection of colonialism, racism and apartheid. It established the country as a "sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all", with a multi-party system of government. The legal basis of the Namibian State and its institutional structures were decided by the Constituent Assembly. The Constitution follows the principle of separation of powers, whereby the system of government is a multi-party democracy with checks and balances exercised through the state organs of the executive, the legislature and the judiciary. General, presidential, regional and local government elections are held every five years.

3. Organs of State

25. Executive power in Namibia is vested in the President and the Cabinet, who initiates laws and ensure that they are implemented. In terms of article 35 of the Namibian Constitution, the Cabinet is composed of the President, the Prime Minister and ministers appointed by the President from the ranks of members of the National Assembly. The President is elected by direct popular vote for a term of five years.

26. Legislative powers reside with Parliament, which consists of the National Assembly and the National Council. The National Assembly is made up of 72 members elected directly through secret ballot by all Namibians from the party list method of proportional representation and up to six non-voting members are appointed by the President by virtue of their special expertise, status, skill or experience. All the laws are subject to the assent of the President and are reviewed by the National Council, which consists of 26 members, two from each of the 13 regions.

27. Under the Namibian Constitution, both the Cabinet and the Ministers are empowered and obliged to uphold the Constitution and the laws of the country. Article 41 provides further that all Ministers shall be accountable individually for the administration of their own ministries and collectively for the administration of the work of the Cabinet, both to the President and to Parliament.

28. The powers of the judiciary vests with the courts of Namibia — the Supreme Court, the High Court and the Lower Courts. The independence of the judiciary is guaranteed by the Constitution. Article 32 of the Namibian Constitution empowers the President to appoint the judges of the High Court, the Ombudsman and the Prosecutor-General on the recommendations of the Judicial Service Commission. The Judicial Service Commission consists of the Chief Justice; a judge of the High Court, the Attorney General and two members from private practice representing the interests of the organized legal profession. The president may remove Namibian judges only on the grounds of mental incapacity or gross misconduct, acting on the recommendations of the Judicial Service Commission.

29. The country is divided into thirteen administrative regions. Each region has an elected Regional Council. All the members of the Regional Councils are elected by secret ballot.

C. The economic, social and cultural characteristics of Namibia

30. Namibia is ranked as an upper middle-income country, but it has one of the most skewed incomes per capita in the world. The disparities in per capita income among the major segments of the population are the result of the lopsided development which characterized the Namibian economy in the past.

31. Half of the population depends on agriculture for subsistence and economical gain. Very recently, a new research methodology has been introduced by the Central Bureau of Statistics, which is based on costs of basic needs, compared to the methodology of a food-ratio method to determine poverty. Namibia still lacks behind in human development. About 60% of Namibians live on US$ 2.00 a day or less, according to the United Nations Human Development Index of 2011.

32. Namibia mainly exports minerals, fish and fish products, meat and animal products. The gross domestic product (GDP) in 2006 was N$ 45.87 billion (US$ 6.1 billion). In the years 2002-2006, GDP growth was 4.5% on average. GDP per capita in 2005 was N$ 24,064 (US$ 3,200). In 2009 GDP was N$ 75,071 billion (US$ 8,840 billion), in 2010 it was N$ 81,118 billion (US$ 10,815 billion) and in 2011 it was N$ 90,834 billion (US$ 13,164 billion).

33. Namibia's economy is primarily based on agriculture, mining, fishing and tourism. The country's main natural resources are diamonds, copper, uranium, gold, lead, tin, lithium, cadmium, zinc, salt, vanadium, natural gas and hydropower. The country has a relatively fast-growing tourism sector, and the tourism industry is becoming an increasingly important foreign exchange earner and job provider for Namibians. In 2006, the tourism sector contributed 16% to the country's GDP and accounted for nearly 72,000 jobs representing 18% (update to 2012) of the total employment market. Thus the tourism sector is a vital engine of growth for the Namibian economy. Namibia has a total of 26 parks and reserves, covering approximately 15% of the total land area, and 12 Government-owned rest camps in the parks managed by a parastatal company, the Namibia Wildlife Resorts (NWR). The tourism industry in Namibia is in third position behind agriculture and mining.

34. The Namibian economy depends on the extraction and processing of minerals for export. The mining industry has been the backbone of Namibia's economy since the early twentieth century, with diamonds being the largest earner of foreign currency. Mining and agriculture accounted for almost 25% of GDP, of which less than a third is generated through subsistence agriculture. Beef production accounts for 85% of the nation's gross agricultural income.

35. Another sector contributing to the national output is the fishing industry. Namibia is a significant player in the international fishing industry; it is one of Africa's biggest

fisheries nations in terms of production and exports. As a result of the sparsely populated coast and the absence of heavy industries, the fishing grounds are still unpolluted. This has prompted Spanish, French and other foreign companies to invest in the sector. About 600,000 tons of fish and shellfish are landed annually for processing onshore. However, the manufacturing base remains small, with fish and meat processing being the largest individual sub-sectors, although beverages, other food products, metal and pre-cast concrete products, furniture, and leather goods are also produced locally.

36. Like many other African countries, agriculture supports the majority of the population. The country has about 6,500 commercial farms representing about 44% of the country's land mass, while communal agricultural land on which 70% of the population depends for livelihood represents 43% of the land.

37. The white population largely controls ranching. In the central and southern parts of the country, white Namibians carry out intensive livestock farming of cattle and sheep for export. Namibia's modern-market sector produces most of its wealth, while a traditional subsistence agriculture sector (mainly in the North) supports most of the labour force. In other industries, including mining, fishing, and tourism sectors, the participation of indigenous entrepreneurs is being increased to provide opportunities for previously disadvantaged citizens.

38. The energy sector plays a vital role in Namibia's economy. The country is endowed with natural energy resources such as natural gas (which was discovered in 1973 off the Orange River in the south), wind, sun and biomass but there are no investors to develop and tap these resources to benefit the country. Therefore the country depends to a large extent on imports of electricity from neighbouring countries, mainly South Africa, to meet the national demand.

39. Nampower is the country's national power utility and is responsible for the country's electricity network. The main sources of power are the thermal, coal-fired Van Eck Power Station (120 megawatts) on the outskirts of Windhoek, the hydroelectric plant at Ruacana Falls (240 megawatts), and the diesel-driven Paratus Power Station at Walvisbay (24 megawatts). In 1996, the government through the Ministry of Mines and Energy established the Solar Revolving Fund (SRF). The aim of the Fund is to promote and finance alternative energy systems such as solar home systems which typically power lights, radio, TVs, cell phone chargers, water heaters and solar water pumps, and is primarily targeted at servicing rural communities not connected to the national power grid.

40. However, the main sources of energy used in Namibia at household level for cooking, heating and lighting are wood or wood charcoal, electricity and gas or paraffin. In the 2009/2010 Namibia Household Income and Expenditure Survey (NHIES), it was reported that 56% of households use wood or charcoal, 33% of households nationally use electricity and 3-6% of the households use gas or paraffin. In rural areas about 87% of the households use wood or charcoal compared to 16% of urban households. The use of solar energy for cooking, lighting and heating is very small as compared to the uses of other sources of energy for the same purposes. The result of the survey also indicates that candles and electricity are the sources of energy for lighting.

41. The country has a relatively well-established road network of approximately 43,000 kilometres, of which more than 6,000 kilometres is tarred while the rest consists of gravel and earth (sand) roads, providing access to the majority of towns and villages in the country. Two major development projects took place after independence; the construction and completion of the Trans-Caprivi Highway and the Trans Kalahari Highway, which provide access to Botswana, Zambia, Zimbabwe and South Africa for travel, trade and communication. There is no public transport system in Namibia, but privately operated bus services are readily available across the country.

42. Namibia's railway network is managed by TransNamib Holdings Ltd., a wholly state-owned enterprise and comprises 2,600 kilometres of 1.065-metre narrow-gauge railway lines. The main line runs from the South African border via the major towns in the south to Windhoek, Okahandja, Swakopmund and to the Walvisbay harbour. A northern branch connects Omaruru, via Otjiwarongo, Otavi, Tsumeb and Grootfontein. In the far north, after independence a newly-built track connects Tsumeb and Oshikango, on the Angolan border. In the east, Windhoek is connected to Gobabis with another branch line. The railway network is old and worn out. The locomotive fleet, train control systems and maintenance workshops are old. There is a shortage of wagons with a carrying capacity of 16.5 tons. There is no rail accessories factory and the technical training facility is not well equipped.

43. The Government established the Motor Vehicle Accident Fund in 1990 by an Act of Parliament to compensate road accident victims. This Act was replaced by two subsequent pieces of amended legislation, the latest being The Motor Vehicle Accident Fund Act of 2007. The Fund operates as a "third party public insurance cover with a social security element". It is funded through a levy of 43.7 cents for diesel and 39.7 cents for petrol per litre respectively, which can be adjusted at the discretion of the Minister of Mines and Energy in accordance with the accident rate. As soon as fuel is put in a car in Namibia the driver is covered against the liability that accrues due to his negligence, even if he or she is a visitor or tourist. The Fund provides a minimal safety net for anyone in Namibia who is wronged by an accident. In the case of the unfortunate death of a tax-paying breadwinner, the surviving spouse, children and/or indigent parents are compensated by the Fund for loss of support.

44. Namibia has two harbours, Walvisbay and Luderitz, which are administered by the Namibian Ports Authority (Namport), a state-owned enterprise established in 1994. Traditionally, Luderitz was a fishing port; it now has a cargo and container quay. The port is strategically located to cater for southern Namibia and Northern Cape in South Africa. Walvisbay is the only deep-sea harbour and is a safe and economical option for the country's export and import trade to southern, west and central Africa and to Europe.

45. Namibia has one of the most modern postal and telecommunications infrastructures in Africa, comparable to international standards and the rest of the world. Namibia has direct fibre-optic cable links to Botswana and South Africa, with additional satellite links to South Africa for voice and data, and to Angola for voice. The rest of the world can be reached from Namibia through direct-dialling facilities to 221 countries switched via the South African international exchange. In Namibia, the post office is an important public service that facilitates communications, financial and other types of transactions for the household. The number of post offices increased from 73 in 1995, to 114 in 2004 and to 134 in 2012, and automation of post office counters which stood at 69 in 2004 increased to 100 in 2012, whereas mail delivery standards improved to 100% of mail delivered countrywide within three days and within one day in the capital city. The NHIES survey of 2003/2004 revealed that 18% of the households are less than 1 kilometre to the nearest post office, 30% are between 2 and 5 kilometres and 27% are over 21 kilometres. In urban areas, 36% of the households are within 1 kilometre to a post office, compared to 5% of the rural households. Over 67% of rural households are 11 kilometres or more to the nearest post office and 24% are more than 50 kilometres to the nearest post office.

46. Regions such as Erongo, Karas and Khomas have the highest proportion of households with less than 1 kilometre to a post office, with 52%, 33% and 30% respectively. On the other hand, in the Omaheke, Kavango and Kunene regions, the proportion of households with more than 21 kilometres to a post office is 57%, 55% and 52%, respectively.

47. In terms of expenditure, Namibia is one of the few countries in Africa that relies more than 97% on its own resources. For the last three years, the Government stopped public borrowing and the issuing of bonds because Namibia was in an "unsustainable debt situation"; during that time, the total public debt stock comprised 33% of the GDP rather than the benchmark maximum of 25%. However, because the Namibian economy is small and very open, it remains vulnerable to external pressure, such as oil and food price increases, power shortages and currency fluctuations.

II. Legal and institutional framework for the protection of human rights

A. The Constitution

48. The Namibian Constitution is a product of a struggle for sovereignty and human rights and came into force upon the country's independence as the supreme law of the country and is committed to the preservation of human rights and freedoms. This is reflected in article 1, which establishes Namibia as "a sovereign, secular, democratic and unitary state founded upon the principles of democracy, the rule of law and justice for all". Chapter 3 of the Constitution constitutes the Bill of Rights, which protects most of the human rights referred to in the various international human rights instruments. For example, the right to life is protected. Flowing from this, the death penalty is totally abolished in Namibia.

B. The judiciary

49. Article 78 of the Namibian Constitution establishes the judiciary as the third organ of State. It consists of the Supreme Court, the High Court and the Lower Courts. The Constitution gives the courts, especially the Supreme Court, the important functions of maintaining checks and balances between the two other organs of State, and of the protection of the rights of individuals as provided for in the Bill of Rights. Article 78 further protects the judiciary in very elaborate and unambiguous terms, including its protection from interference by members of the executive or legislative branches of the State or by any other person. Therefore the independence of the judiciary is constitutionally guaranteed and respected.

50. Judicial independence has been strictly protected in Namibia. In many instances where Government was a party to proceedings, the courts decided against the Government in cases involving political issues, elections and human rights issues. This is clearly an indication that the Government has not politicized the bench through its appointment of Judges.

51. Because Namibia has a justiciable Bill of Rights, any person who alleges that his or her human rights have been violated or are likely to be violated may seek redress in the High Court in terms of article 25(2) of the Constitution. If he or she is dissatisfied with the decision or judgement of the High Court, he or she may appeal to the Supreme Court, which exercises appellate jurisdiction.

52. Article 25(2), read together with article 18 of the Constitution, provides that:

> "...aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require,

and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient".

53. Namibia has a strong judiciary, which has actively defended the constitutional rights of its citizens. The courts have handed down a number of judgements in which they uphold the rights of individuals under the Bill of Rights, including the rights of persons with HIV/AIDS and the rights of accused persons to legal representation to be provided by the State.

C. Judicial precedents of human rights cases

54. In *Government of the Republic of Namibia and Others v. Mwilima and all the Other Accused in the Treason Trial* 2002 NR 235 (SC), the accused (applicants) were all awaiting trial prisoners in a treason trial. The director of Legal Aid disapproved their applications for legal aid, arguing that there were no funds available to grant them legal aid. The suspects launched an application in the High Court for an order directing the State that such legal aid should be granted. It was argued on behalf of the Applicants that according to the Constitution the State has an obligation to provide legal aid to the Applicants in order for them to have a fair trial as provided in article 12 of the Constitution. The Government, on the other hand, argued that the provision of legal aid is envisaged under article 95 of the Constitution as a guiding principle of State policy, and that such legal aid was subject to the availability of resources, and was therefore it was not enforceable. The High Court ruled in favour of the accused/Applicants, and ordered that the Director of Legal Aid should provide such legal aid. The State appealed to the Supreme Court, and the Supreme Court confirmed the ruling of the High Court.

55. In *Kauesa v. Minister of Home Affairs and Others* 1995 NR 175 (SC), the Supreme Court had to rule on the unconstitutionality of Regulation 58 (32) of the Police Force deemed to have been made under the Police Act, which stipulated and prohibited police officers from commenting unfavourably in public on the administration of the Namibian Police Force or any other government department and rendered such conduct an offence. The officer in question appeared on national television and made certain unfavourable remarks about the affirmative action process being employed to restructure the Namibian Police Force. He was subsequently charged with contravening the said regulations. He challenged the said Regulation, arguing that such Regulation will continue to restrict his right as a citizen to freedom of expression enshrined under the Namibian Constitution. The Supreme Court ruled in his favour and stated that "Regulation 58 (38) was arbitrary and unfair and unconstitutional. In order to live in and maintain a democratic State the citizens must be free to speak, criticize and praise where praise is due".

56. During July 2012, the High Court, in the case of *LM&MI&NH v. the Government of the Republic of Namibia* (unreported judgement delivered on 30 July 2012) The Legal Assistance Centre filed a lawsuit against the Government on behalf of 16 HIV-positive women who claimed that they were sterilized without their informed consent at state health facilities, after being told that the procedure was a routine treatment for HIV/AIDS. The Legal Assistance Centre argued that the practice discriminated against persons living with HIV and interfered with their rights to found a family, and to dignity and privacy as provided for in the Namibian Constitution. The Court ruled in favour of three women only in that the medical doctors employed at State hospitals sterilized them without their informed consent. The Government has no policy which compels the sterilization of persons who are infected by HIV/AIDS.

D. The Ombudsman

57. Chapter 10 of the Constitution and the Ombudsman Act, Act No. 7 of 1990, spells out the key mandate areas and powers of the Ombudsman in Namibia with regard to human rights violations, which includes the protection, promotion and enhancement of respect for human rights in the country.

58. The Ombudsman established a Human Rights Committee, which is composed of civil society, and non-governmental organizations (NGOs) to put special emphasis on gender-based violence.

E. Ministry of Justice

59. The Ministry of Justice is responsible for ensuring the promotion, protection and compliance with human rights on behalf of the Government. It coordinates the Inter-Ministerial Committee on Human Rights and International Humanitarian Law and drafts all the state reports on the various human rights instruments. To this end, it ensures implementation of human rights programmes and administration of justice. The Attorney General scrutinizes all the bills (draft legislation) to ensure that the bills promote and do not violate human rights.

F. The Police Force

60. The Police Force receives human rights training designed by a local NGO, the Legal Assistance Centre. The Faculty of Law at the University of Namibia also trains senior members in the Police Force and Namibia Defense Forces (NDF) members in human rights and the criminal justice system. Some officers continue to attend training programmes with human rights components, including human trafficking, at the International Law Enforcement Academy in Gaborone, Botswana.

III. Legislation supporting human rights

61. Civil and political rights are enshrined in the Namibian Constitution under Chapter 3 on Fundamental Human Rights and Freedoms and includes the protection of certain economic, social and cultural rights. In order to give effect to the constitutional provisions, Parliament has passed, among others, the following legislation:

- The Ombudsman Act No. 7 of 1990;
- Local Authorities Act No. 6 of 1992;
- National Pension Act No. 10 of 1992;
- Agricultural (Commercial) Reform Act No. 6 of 1995;
- Medical Aid Fund Act No. 23 of 1995;
- Co-operative Act No. 23 of 1996;
- War Veterans Subvention Act No. 16 of 1999;
- The Racial Discrimination Prohibition Act No. 26 of 1990;
- Racial Discrimination Amendment Act No. 26 of 1998;
- Affirmative Action (Employment) Act No. 29 of 1998;

- Married Persons Equality Act No. 1 of 1996;
- Combating of Rape Act No. 8 of 2000;
- Combating of Domestic Violence Act No. 4 of 2003;
- Traditional Authorities Act No. 25 of 2000;
- Communal Land Reform Act No. 5 of 2002;
- Maintenance Act No. 9 of 2003;
- Children Status Act No. 6 of 2006;
- Labour Act No. 11 of 2007;
- Social Security Act No. 34 of 1994;
- Education Act No. 16 of 2001;
- Community Courts Act No. 10 of 2003;
- The Police Act No. 19 of 1990.